2398

SUPREME COURT OF THE UNITED STATES.

No. 77.

THE WESTERN TELEGRAPH COMPANY, APPELLANT,

vs.

THE MAGNETIC TELEGRAPH COMPANY, AND ARUMAH S. ABELL, AND ZENUS BARNUM, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE U. S. FOR THE DISTRICT OF MARYLAND.

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THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty

Present, the honorable W. F. Giles, judge of Maryland district; William M. Addison, esquire, attorney; John D. Watkins, esquire, marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

THE WESTERN TELEGRAPH COMPANY
vs.
THE MAGNETIC TELEGRAPH COMPANY, and Arumah S. Abell and Zenus Barnum.

Be it remembered that on the fifteenth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, the Western Telegraph Company, by Cornelius McLean and George H. Williams, its solicitors, filed in the circuit court here its bill of complaint against the Magnetic Telegraph Company, and Arumah S. Abell and Zenus Barnum, in the words and of the tenor following, to wit:

Bill of complaint.

To the honorable the judges of the circuit court of the United States for the district of Maryland:

The Western Telegraph Company, a corporation incorporated by the States of Maryland, Virginia, and Pennsylvania, bring this their bill of complaint against the Magnetic Telegraph Company, a corporation incorporated by the State of Maryland and other States, and having its office and doing business in the State of Maryland, and Arumah S. Abell and Zenus Barnum. And thereupon your orators complain and say, that heretofore one Samuel F. B. Morse became entitled, under letters-patent from the United States, to the exclusive use and ownership of the American electro-magnetic telegraph, a new and useful invention, which immediately went into general use in the United States, and has been generally known as and called Morse's Telegraph.

And your orators further show, that on the said letters-patent having been contested, their validity and the right of the said Morse and his assignees thereto were finally established by the

Supreme Court of the United States in the case of O'Reiley and others against the said Morse and others, reported in the fifteenth volume of Howard's Supreme Court Reports, except as to claim No. 8 of the first of the re-issues of the thirteenth of June, in the year eighteen hundred and forty-eight; as to which, it was in the same case determined and adjudged, that the said Morse might disclaim under the laws for that purpose; which he accordingly did, during the existence of the first term of his patent, and before the renewal thereof, which he has since obtained, and under which renewal and subject to whcih disclaimer your orators now claim in this case.

And your orators further show, that the mode by which the said letters-patent and the said invention were brought into general use was by the establishment of telegraphic lines of communication from important and business points in one section of the country to similar points in another section, which was frequently accomplished by means of sales of exclusive rights between those points to persons or incorporated companies; one purchasing from one point to another, not so far distant as to require a very large capital to erect the necessary fixtures, and another purchasing the like exclusive right from one of the said points to some other, so as to make a continuous line of telegraph by means of the co-operation of the said persons or companies. In this manner telegraphic lines under the said patent have been extended from one end of the Union to the other.

And your orators further show, that in pursuance of the said policy the said Morse and others, to whom he had assigned a joint interest in his said invention, by their assignments duly recorded in the Patent Office, did, on or about the fifteenth day of May, in the year eighteen hundred and forty-five, grant and convey to the said Magnetic Telegraph Company the exclusive right of using the said patent between the cities of New York, Philadelphia, Baltimore, and Washington. Under the said grant the said Company proceeded to erect a telegraphic line between those cities, and entered into the business of carrying telegraphic messages accordingly. By the terms of the said grant, the said Company were obviously confined to the said points as designated in the same, and were not authorized by themselves or in conjunction with any other person or company to bring such messages from the West to the city of Washington or Baltimore, or from those cities to the West; such right being still in the hands and ownership of the said patentee and his assignees, unless disposed of to some other person or persons, which your orators aver it never was.

And your orators further show, that the said Morse and his assignees, being still owners of the said patent, so far as the right to use the same on telegraphic wires between Wheeling and Pittsburgh, and Washington city and Baltimore, did, by their assignment dated on the thirteenth day of April, in the year eighteen

hundred and forty-nine, which was duly recorded, grant and convey to your orators the exclusive right to use the said invention between the city of Baltimore and Wheeling, with the right to erect branch lines to Washington city and the city of Pittsburgh; and that immediately afterwards, your orators proceeded to erect telegraphic lines between the said cities, and commenced the business of carrying telegraphic messages under the said patent right, having expended in the preparation therefor, and in the purchase of the said right, upwards of one hundred thousand dollars. One of the assignees of the said Morse did not convey his interest to your orators at the time above specified, but executed an assignment afterwards, which was lost without having been recorded, and he has lately, on or about the twenty-seventh day of March last, assigned anew his interest to your orators, which assignment was duly recorded in the Patent Office.

And your orators further show, that the exclusive right to use the said invention between the cities of Washington and Baltimore in the East, and the said cities of Wheeling and Pittsburg in the West, would hardly have justified the outlay of capital made by your orators, in bringing the said invention into use between those points, if their telegraphic despatches were to be limited to them, between which there was at that time a very small business.

Your orators therefore looked, not only to the business actually existing between those cities and the telegraphic messages starting from the said points, but also to the like messages which would be required between Baltimore and Washington and cities west of the above-named western points, and hoped and expected, and were so led to believe from the usual course of business and the nature of the monopoly which they had secured, that they would carry from Washington and Baltimore to Wheeling and Pittsburgh all western messages from beyond those points, and directed to the said cities of Washington and Baltimore; and that in such manner they would have the carriage of all telegraphic messages to the said cities from the West, and from the said cities to the West, and by a continuous line to the South, along the valley of the Mississippi, as far as New Orleans. And so far your orators have been advised their rights extend, and that no telegraphic message can be rightfully sent through Wheeling or Pittsburgh to the said cities of Washington and Baltimore, or from the last-named cities to points farther west than the first-named, by any other telegraphic line than your orators, so far as your orators' line extends, without a clear and palpable evasion of your orators' exclusive right as granted to them by said Morse and others.

And your orators have been further advised, and so insist, that any acts or doings of the said Morse or of any of his assignees, by which any such messages passing through Wheeling or Pittsburgh on their way to Washington or Baltimore, or from those cities to western points beyond Wheeling and Pittsburgh, and passing

through either of them, have been diverted from the said line, and carried on other telegraphic lines, are infringements of your orators' exclusive rights as granted to them, and of great and permanent injury to your orators.

And your orators have been informed and believe, and therefore aver and show, that under various assignments of exclusive rights to use the said invention from the said Morse and his assignees, sundry lines of telegraph have been established from Pittsburgh and Wheeling to Louisville, Cincinnati, St. Louis, and other western cities, and also one or more lines connecting with some of those lines, and extending down the valley of the Mississippi to New Orleans, as well as one or more lines from Pittsburgh to Philadelphia, and a line from Harrisburg, in Pennsylvania, to Baltimore. By means of the said western telegraphic lines your orators' hopes and expectations might have been completely realized if they had been allowed to enjoy their rights from Washington and Baltimore to the said cities of Wheeling and Pittsburgh, and from the last-named to the first-named cities, in carrying all telegraphic messages between those points; though your orators never claimed, and do not now claim the carriage of any messages directed to and bona fide intended for the city of Philadelphia from the said western points, as they have understood and believe that separate rights have been sold by the said Morse and others for the same; and they are willing to admit that the said patentees had the same right to sell the said patent for those points, as they had to sell for the points which your orators claim.

And your orators further show, that so long as the said telegraphic lines, including the line of the Magnetic Telegraph Company, and that from Harrisburg to Baltimore, were confined to the business of transmitting telegraphic messages to and from the points for which they had the exclusive right, and on reaching the extreme point, of their right to handing over the said messages to the line of the party or company having the exclusive right beyond for the particular point to which the said messages were directed, your orators had no right to complain; but your orators further show, that the said companies or persons soon conspired together, or contracted with each other to transmit telegraphic messages from and to the West by a circuitous route through Philadelphia and Harrisburg, so as to exclude your orators and cut off their business.

And your orators further show, that the said Magnetic Telegraph Company well knew that your orators had acquired the right above described, and the fair and reasonable extent thereof, as well as the usual and proper mode of conducting the said telegraphic business, and the manner in which separate and exclusive rights had been granted by the said patentees; and yet the said Company, shortly after your orators' line was established and in successful operation, received at Philadelphia, and thence brought

to Baltimore and Washington, telegraphic messages from western points beyond Wheeling and Pittsburgh, which they knew had been brought through Wheeling and Pittsburg around by Philadelphia, for the purpose of being transmitted by them to Baltimore and Washington; and in like manner received similar messages at Baltimore and Washington, and transmitted on their line to Philadelphia, and gave them to some of the lines from the last-named city, the said messages being directed to points beyond Wheeling and Pittsburgh westwardly, and the said defendants well knowing that they were to be transmitted by the said lines through the cities of Wheeling or Pittsburgh, or had already been so transmitted. The said Magnetic Telegraph Company, by their said action, which was, as your orators believe and therefore so charge, in some kind of combination or conspiracy with the said lines, or the persons owning the same, or under some contract by which either the said Company or the owners of said lines reduced their usual charges, so as to compete with your orators, (though your orators are ignorant of and therefore do not pretend to describe the kind of arrangement or contract into which the said defendants entered for that purpose,) received large sums of money, made large profits, and so reduced the proper business of your orators as to make their investment of no profit whatever to them; and so embarrassed them and crippled all their operations, as to bring them into bad repute with the public, draw away their customers, and finally drive them to the brink of ruin. Your orators were at first unwilling to believe that such a course could be pursued by men having any claim to honesty and character, and accordingly remonstrated with sundry of the directors and other persons having charge of the said Company, when they were informed that the said defendants had passed an order to stop the said proceedings, so as to leave to your orators the business to which the said defendants admitted they were entitled. It was soon, however, ascertained by your orators that the professions of the said defendants were illusory, and that in spite thereof the said defendants continued to do the same business as before by the way of Philadelphia, which your orators aver they have ever since continued to do whenever they found their advantage therein.

Indeed, so serious and deliberate was the conduct of the said defendants, that they did not confine their interference to messages from beyond Wheeling and Pittsburg, but brought to Washington and Baltimore messages from those places in the same manner, and by their said repeated and deliberate infringements they made the Pittsburgh branch of your orators' line perfectly useless, and finally obliged them to abandon it.

And your orators, still hoping to secure the enjoyment of their said rights, and to guard against the illegal invasions thereof under which they had so severely suffered, entered into arrangements, and contracted with the said western lines for doing the through

business from the West. If at that time and since the said defendants had respected your orators' rights, either under their assignment of the patent, or under the said contracts, all would have gone well; but the said defendants were always ready, and did help the said companies, persons, and lines to evade their said engagements, which, without the assistance of the defendants, and the owners of the line from Harrisburg to Baltimore, but chiefly the assistance of the said defendants, they could not have done; so that your orators never at any time received all the business to which they were so entitled under their patent rights, and the chief injury was done by the said defendants in the manner above stated.

By these several contrivances, evasions, and infringements, your orators' finances were reduced so low that they were forced to enter into a contract with the Baltimore and Ohio Railroad Company for erecting for them a line on their railroad, for which they were obliged to give to the said railroad company privileges of large value; and for the value of the said privileges your orators are advised that they have a right to hold the said defendants responsible.

During the time of making the new line, and when on account of various accidents and adverse circumstances not necessary to be here repeated your orators were not always able to transmit messages, all or nearly all their business was done by the said defendants; and although your orators could not at that time always do it, yet they aver that the unconscionable acts and doings of the said defendants had driven your orators into that predicament, and that they are therefore responsible in account for the moneys received at that time, as well as before and since.

And your orators further show unto your honors, that during the last year, after their telegraphic lines had been made one of the most perfect and reliable lines in the United States, they well hoped that they would be able to retain their proper share of the business; but that on or about the month of January last, they were notified by one of the lines west of Wheeling and Pittsburgh that no more telegraphic messages for Baltimore or Washington from points west of the first-named cities would be given to your orators for transmission; and at the same time your orators discovered that all the said western business was again transmitted by way of Philadelphia, and thence on the said defendants' line to Baltimore and Washington.

That this was done under some contract between the said defendants and the said western lines and the line from Philadelphia to Pittsburgh, your orators have no doubt, and so aver their belief to be; and that for the purpose of accomplishing the object of taking away your orators' business, a reduction was made by some or all of the said lines in their usual rate of charges. But your orators have been advised that it is entirely immaterial to them

what arrangements or contracts have been made for that purpose by the said defendants, and that it would be useless to state the same if your orators knew the character thereof, because your orators aver and charge, that without the co-operation of the said Magnetic Company, the defendants in this cause, or of the owner of the line from Harrisburg to Baltimore, no telegraphic message could have been transmitted to or from Baltimore and Washington to and from the west of Wheeling and Pittsburgh through those cities, and that the defendants, the said Company, are responsible to your orators for the whole infringement of your orators' rights whenever they carried or sent any such message as has been above described.

And your orators further show, that the said defendants have not been satisfied with taking western messages coming through Pittsburgh and Wheeling, and from those places for Baltimore and Washington at Philadelphia, but that they have also received such messages for Washington at Baltimore from one George C. Penniman, who owns a line under an assignment from the said Morse for the exclusive use of the said patent between Baltimore and Harrisburg, and carries on the same conjointly with one John King, or through the agency of the said King, who is the operator and active man in the management of the said line in the city of Baltimore, and State of Maryland, and carry the same to the said city, well knowing that they had been brought by means of the said Harrisburg line, by the said Penniman and King, through the said cities of Wheeling and Pittsburgh, from points west thereof.

Indeed, your orators aver and charge, that the persistent and clandestine course of the said defendants has been followed by them for the purpose of ruining your orators, so that they and their affiliated lines might do all the business to which your orators are entitled, and in the preparation for which they had expended so large a sum of money. And so well have the defendants succeeded, that they have brought your orators into great pecuniary difficulties; have deprived them entirely of the Pittsburgh branch, and of more than one-half of their whole business, and recently of nearly the whole of their through business, so as, for the present, to force your orators to rely, as they are now obliged to do, on their local business to keep themselves from absolute destruction.

But your orators aver and further charge, that if the said defendants had not interfered with them in the manner above stated, by lending their telegraphic lines to other persons and parties to take away your orators' business, their business would have been amply sufficient to yield a clear profit of six per cent. from the time of the erection of their magnetic telegraph line to the present moment; for which loss your orators are advised and insist the said defendants are accountable to your orators, as the true measure of the money which *which* they have received. Your orators do not know how much money the said defendants have received

from the said messages which they have unlawfully and unconscientiously taken and sent; but they charge that they are responsible for all the moneys which they have received without being entitled to any credit for what they have paid away to other persons and companies, and that your orators are entitled to an account thereof.

And your orators further show, that the said defendants have been and now are under the management and control of certain directors, of whom Arumah S. Abell and Zenus Barnum are citizens and residents of the State of Maryland, and well know all the facts hereinbefore charged, and the state and proceedings of the said other defendants, and have been the most active in the management of the concerns of the said defendants in the State of Maryland, in their office in the said State, through which their telegraphic line passes, from Washington city to Philadelphia, and from whom, therefore, your orators expect to obtain a discovery of the acts and doings of the said defendants in this behalf, and of the moneys which they have received as aforesaid. And your orators herewith file, as parts of this bill of complaint, which they pray may be taken as such, copies of the assignments above mentioned to your orators, and to the defendants, the said Company, marked exhibits A, B, and C.

And your orators aver that all the said acts and doings of the said defendants, as hereinbefore stated, are against equity and good conscience, and tend manifestly to their wrong and injury.

And forasmuch as your orators are remediless in the premises, according to the rules of the common law, and can only obtain relief in this honorable court, where this and matters of like nature are properly cognizable, may it please your honors to decree that the said defendants pay unto your orators the sums of money which they have received from the said telegraphic messages which they have carried or sent as aforesaid in violation of your orators' said rights, if, on an accounting with your orators of and concerning the same, the sum thereof should turn out to be more than will make six per centum on your orators' said capital, with the receipts which have come to your orators; and if less, that the said defendants pay to your orators such sum as will, with their receipts, make six per centum on their capital; that the said Company account with your orators for the value of the said Pittsburgh branch, and for the value of the said privileges so granted to the railroad company; that the said Arumah S. Abell and Zenus Barnum discover what amount of money the said defendants have received as aforesaid, and that the said defendants be enjoined, and the United States most gracious writ of injunction be issued to the said defendants, the said Company and the said Arumah S. Abell and Zenus Barnum, their servants, agents, operators, and all other the said defendants, officers, and employees, restraining and enjoining them from taking or receiving on any point on their said telegraphic

line, and carrying to Baltimore or Washington city, or sending to any point south of Washington city, through Washington city, any telegraphic message coming from Pittsburgh or Wheeling, and brought by any of the said telegraphic lines, or any agent thereof, to the said defendants, the Magnetic Telegraph Company, or any such messages brought by any of said telegraphic lines, or any agent thereof, to the said defendants from any points west of said cities of Wheeling or Pittsburgh, through the said two last-named cities, or either of them, and also from taking or receiving, on any point of their said telegraphic line, and sending either on their own line or in part on their own line, and in part on either of the other said telegraphic lines, any telegraphic messages from Washington or Baltimore, or from points south of Washington, brought to Washington by any telegraphic line acting under Morse's patent, and handed to them by the said line, or any agent thereof, directed to the said cities of Wheeling or Pittsburgh, or to any point west of the said two last-named cities, by any of said telegraphic lines passing through the same or either of them; and also to decree unto your orators such other and further relief as may seem reasonable in the premises.

To the end, therefore, that the said Magnetic Telegraph Company and the said Arumah S. Abell and Zenus Barnum may show cause why your orators should not have the relief hereby prayed, and answer as to the said Company under its seal, and the said Abell and Barnum on their respective corporal oaths, according to their several and respective knowledge, remembrance, information, and belief, in a full, true, perfect, direct manner to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, they are respectively required to answer, that is to say:

1. Were not the said letters-patent granted to the said Morse, as herein stated? and has not the telegraph called Morse's telegraph been ever since in use in the United States under the said patent as his?

2. Have not the said patent rights been established and confirmed by the Supreme Court of the United States, as stated herein?

3. Has not the Magnetic Telegraph Company used the said patent right under the assignment herein mentioned from the said Morse and others since *since* the execution of the same? and does it not now use the same under the said assignment, and with the assent of the said Morse and others?

4. Have not the complainants used the said patent according to the said assignments to them in the conveyance of telegraphic messages between Baltimore and Washington, and Wheeling and Pittsburgh? and did not the Magnetic Telegraph Company know of the said assignment at the time of its execution, or shortly afterwards?

5. Have not the Magnetic Telegraph Company taken telegraphic

messages from Wheeling and Pittsburg at Philadelphia and Baltimore respectively, and transmitted the same on their telegraphic line, well knowing that the same were brought to them by the other telegraphic lines herein mentioned, and directed to the said cities, or one of them, and dated at Wheeling or Pittsburgh, or at places west thereof, and brought through the said cities of Wheeling or Pittsburgh? and if so, what moneys have the said Company received for such messages up to the present time in each and every year, and at what time they began taking the same?

6. Have not the Magnetic Telegraph Company taken or received telegraphic messages at Washington, dated there or at some point south thereof, and brought there by some telegraphic line under Morse's patent directed to Pittsburgh or Wheeling or some point west thereof, and transmitted the same on their line as far as Philadelphia, and on one of the other said lines beyond, passing through those cities? and how much money have they received from the same in each and every year, and when they commenced taking the same?

7. Have not the complainants by their officers remonstrated with the agents and officers of the Magnetic Telegraph Company, and particularly with the said Arumah S. Abell and Zenus Barnum, against carrying or sending the said messages to and from the West as an infringement of their patent right? and did not the directors of the said Magnetic Telegraph Company pass a resolution forbidding their officers from receiving any such messages, and at what time? and has not the said order been disobeyed with the knowledge of the directors of the said Company, and is it not still disobeyed?

8. Would not the Western Telegraph business from Baltimore and Washington, through Pittsburgh and Wheeling, by means of established connecting lines under Morse's patent connecting those points with other cities further west, have been sufficient to pay six per centum on the capital of complainants of one hundred thousand dollars, if the complainants could have commanded the whole thereof, so far as it passed between Washington and Baltimore and Pittsburgh and Wheeling? and could they not have commanded the whole thereof but for the interference of the said Magnetic Telegraph Company, and the recent interference of George C. Penniman and John King?

9. What contract, engagement, or understanding has at any time been made by the Magnetic Telegraph Company with any other persons or companies owning telegraphic lines for bringing to Washington or Baltimore western telegraphic messages as stated in this bill, or for sending the same from those cities west? and what deductions have been made by the said Company or others from the usual rates of charges for such messages?

10. Was not the accustomed mode of using the said telegraphic invention, to obtain from the patentees exclusive rights for certain

points, as in the case of the Magnetic Telegraph Company and the complainants? and on obtaining such exclusive right between certain points, have not persons and companies obtaining the same relied for a large part of their profits on receiving and transmitting telegraphic messages between those points from other persons having like rights at each extremity? and would any such exclusive right be of any value, if messages could be sent circuitously from those points or either of them?

11. Have not the Magnetic Telegraph Company, by the means mentioned in the 10th interrogatory, enabled itself, and does it not now, from the extreme points at Washington and New York, take and transmit telegraphic messages from New York to New Orleans, and from Washington to Boston? and did it not in like manner undertake to transmit western messages to and from Washington, to and from Cincinnati, and other western cities? and when did they undertake to do so?

May it please your honors to grant unto your orators the United States most gracious writ of subpœna, commanding the said Magnetic Telegraph Company and the said Arumah S. Abell and Zenus Barnum, all of the city of Baltimore, under certain pains and penalties to be therein named, to appear in this honorable court by a certain day to be also therein named, to abide by and perform such decree as may be passed in the premises; and your orators, as in duty bound, will ever pray, etc.

CORNELIUS McLEAN,
GEORGE H. WILLIAMS,
For Complts.

NOTE.—The defendants, the Magnetic Telegraph Company and Arumah S. Abell and Zenus Barnum, are required to answer the interrogatories in the aforegoing bill numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

CORNELIUS McLEAN,
GEORGE H. WILLIAMS,
Solcrs. for Complts.

Sworn to by Jacob Carman this 15th day of April, 1857, before me,
JOHN HANAN,
U. S. Com'r for Md.

Exhibit A.

Know all men by these presents, that we, Samuel F. B. Morse and Leonard D. Gale, of the State of New York, Alfred Vail, of the State of New Jersey, and Francis O. J. Smith, of the State of Maine, the sole proprietors of the patent right and improvements thereto of Morse's electro-magnetic telegraph, do hereby (the said Morse, Gale, and Vail, by their attorney in fact, Amos Kendall,

of the city of Washington, and the said Smith, in his own right) sell, transfer, and convey to W. W. Corcoran and Benjamin B. French, of said city of Washington, as and in the capacity of trustees only, pursuant to and for the purposes named in certain articles of agreement and association constituting the Magnetic Telegraph Company, and providing for the government thereof, bearing even date herewith, and subscribed by the said S. F. B. Morse and Leonard D. Gale, Alfred Vail, by their attorney Amos Kendall, Francis O. J. Smith, Corcoran & Riggs, Benjamin B. French, and others, subscribers to the capital stock of said Company, and upon the terms and conditions in said articles mentioned, the exclusive right of constructing a line of telegraph under said patent from the city of New York to the cities of Philadelphia, Baltimore, and Washington, and all the rights, privileges, preferences, and advantages of such right derivable from or under said patent right, or under any other letters-patent which said grantors or either of them have or may acquire by virtue of their joint or several discoveries or improvements relating to the subject matter of said patent, or which are enumerated or contemplated for use and improvement in and by the articles of agreement hereinbefore described, are hereby conveyed as aforesaid to said W. W Corcoran and Benjamin B. French in their said capacity of trustees, they accepting said trust accordingly, and as fully as we or either of us could or might convey the same by any other instrument, hereby acknowledging each for himself to have received a valuable consideration therefor as in and by the agreement and undertakings of the articles aforesaid is set forth, said articles also being hereby made a part of these premises, as if fully set forth herein; to have and to hold the same in trust as aforesaid to them, the said W. W. Corcoran and Benjamin B. French, and to the survivors of them, and to any successors or associates of said trust who shall hereafter under any circumstances be selected by the parties interested, and in the manner they shall hereafter prescribe. And the said W. W. Corcoran and Benjamin B. French, upon the conditions and limitations, and for the purposes herein expressed, and to carry out in good faith the provisions of said articles of agreement and their said capacity of trustees, hereby accept said conveyance and transfer, to have and to hold the same to themselves, their survivors and successors, as aforesaid.

Done at the city of Washington, as witness our respective hands and seals this fifteenth day of May, A. D. 1845.

SAMUEL F. B. MORSE, [SEAL.]
LEONARD D. GALE, [SEAL.]
ALFRED VAIL, [SEAL.]
By their attorney in fact,
AMOS KENDALL, [SEAL.]
FRANCIS O. J. SMITH, [SEAL.]
B. B. FRENCH, [SEAL.]
W. W. CORCORAN, [SEAL.]

Witnesses first interlining the words "or associates."

Witnesses to and including all to B. B. French—
J. A. KENDALL.

Witness to W. W. Corcoran's signature—
JAMES KING (OF WM.)

Rec'd and recorded May 29th, 1845.

The U. States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office.

In testimony whereof, I, S. T. Shugert, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-second day of August, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the eightieth.

[SEAL]

S. T. SHUGERT.

Exhibit B.

This indenture, made this 30th day of April, in the year eighteen hundred and forty-nine, between Amos Kendall, as attorney in fact for Samuel F. B. Morse and Alfred Vail, of the first part, and the Western Telegraph Company, of the second part:

Whereas there were heretofore granted by the United States to the said Samuel F. B. Morse letters-patent for the Magnetic telegraph, now generally known and used as Morse's telegraph; and whereas the said Samuel F. B. Morse subsequently assigned portions of his interest in the said letters-patent to Alfred Vail and Leonard D. Gale; and whereas the said Morse, Gale, and Vail subsequently, by letters of attorney, recorded among the transfers of patent rights in the records of the Patent Office at Washington, on the twentieth day of October, in the year eighteen hundred and forty-seven, in liber N. J., pages 161 and 163, constituted and appointed the said Amos Kendall their true and lawful attorney, for them and in their behalf to make agreements and contracts for the sale of rights under the said letters-patent, with full authority to convey the same by all proper and binding instruments in the law, and the said Gale having since resold and reconveyed his interest in said letters-patent to the said Samuel F. B. Morse; and whereas the said Western Telegraph Company are desirous to obtain in due form the privileges of said letters-patent for lines of telegraph belonging to them between Baltimore and Wheeling, with a branch therefrom to Washington city, and a branch from Brownsville to the city of Pittsburg:

Now this indenture witnesseth that the said Amos Kendall,

agent as aforesaid, for and in consideration of the sum of thirty-six thousand two hundred dollars paid to him in the stock certificates of the said Western Telegraph Company, hath, as far as he possesses legal authority by virtue of the power of attorney aforesaid or otherwise, granted, assigned, and conveyed to the said Western Telegraph Company the full and exclusive right to use the invention of said Morse, secured by letters-patent as aforesaid on the said lines from Baltimore to Wheeling, with branches to Washington and Pittsburgh respectively, for and during the rest, residue, and remainder of the time yet to come and unexpired in the said letters-patent, with the benefit of any extensions and renewals thereof, with all improvements and auxiliaries thereto that may at any time hereafter be made by the said patentee; it being understood that the right hereby granted is to be for one wire only, and that the said Company shall not use the said patent right on a second or more wires without the assent of the patentees first had and obtained.

In testimony whereof, the said Amos Kendall, as agent as aforesaid, hath hereto set his hand and seal on the day and year first above written.

(Signed) AMOS KENDALL, [SEAL.]

Signed, sealed, and delivered in the presence of—
WILLIAM LINTON,
GEO. WOOD.

UNITED STATES PATENT OFFICE.

Received 3d day of May, and recorded this 7th day of May, 1849, in liber VI., page 440, of transfers of patent rights.

[SEAL] In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed.

(Signed) EDMUND BURKE,
Com'r of Patents.

Ex'd. W. H. S.

Exhibit C.

Know all men by these presents, that I, Francis J. Smith, of the city of Portland, State of Maine, for a valuable consideration heretofore paid, the receipt whereof I do hereby acknowledge, and in consideration of a former deed of conveyance by me executed of the premises, which deed is alleged to be mislaid or lost, do hereby give, bargain, sell, and convey unto the Western Telegraph Company, a corporation existing under the laws of Maryland, all my right, title, and interest in and to the right and privilege of the exclusive use of the invention of the electro-magnetic telegraph, secured and described in and by several letters-patent heretofore

issued under the laws of the United States to Samuel F. B. Morse, such exclusive use and privilege, as herein conveyed, being confined and limited to the route of said Western Telegraph Company's existing lines from Baltimore, in the State of Maryland, to Wheeling, in the State of Virginia, and in branches to Washington and Pittsburgh cities; the said right herein conveyed, and so limited by said territorial termini, being one-fourth part of said invention and letters-patent, and of all improvements that have been or shall be made thereto by said Morse, as secured or that may be secured by him by new letters-patent, or extension or renewal of existing ones, to the fullest extent said Smith has heretofore been, or of right ought to be, vested therewith, within the said termini, together with all rights and privileges and uses, by connecting with other lines of telegraph pertaining to the routes aforesaid, reserving, however, all rights and claims against said Morse and Alfred Vail, and Amos Kendall, as agent of said Morse and Vail, for reason of any damages occasioned by them or either of them in, by, and from the prior conveyance of three quarter parts of said invention and letters-patent on said routes.

In testimony whereof, I have hereunto set my hand and affixed my seal on this twenty-seventh day of March, at said Portland, A. D. 1857.

(Signed) FRANCIS O. J. SMITH, [SEAL.]

Witnesses—
IRA CROOKER,
WM. H. BAXTER.

Received and recorded 31st March, 1857.

Order of Court.

THE WESTERN TELEGRAPH COMPANY vs. THE MAGNETIC TELEGRAPH COMPANY and others. } In the circuit court of the United States for the Maryland district.

Ordered this 15th day of April, A. D. 1857, that the application for an injunction in this case, stand for hearing on the 18th day of May next, provided a copy of this order be served on the Magnetic Telegraph Company and others on or before the first day of May next.

WILLIAM F. GILES.

Whereupon the writ of the United States of America of subpœna was issued out of the circuit court here, directed to the said Magnetic Telegraph Company and Arumah S. Abell and Zenus Barnum, in the words and of the tenor following, to wit:

Subpœna.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the Magnetic Telegraph Company, a corporation incorporated by the State of Maryland and other States, and Arumah S. Abell and Zenus Barnum, greeting:

[SEAL] You are hereby commanded that, all excuses and delays set aside, you and each of you be and appear before the circuit court of the United States for the fourth circuit in and for the Maryland district, on the first Monday in May next, to answer unto the bill of complaint of the Western Telegraph Company, a corporation incorporated by the States of Maryland, Virginia, and Pennsylvania, in the said circuit court exhibited against you; hereof you are not to fail, as you will answer the contrary at your peril.

Witness the honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-six.

Issued 15th April, 1857.

THO. SPICER,
Ck. Circt. Ct.

Marshal's return.

"Abell and Barnum summoned. Non est the President of the Co.

J. W. WATKINS,
U. S. Marshal.

Afterwards, to wit, on the ninth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, the Western Telegraph Company by its solicitors filed in the circuit court here the following affidavits of service of notice on the defendants, in the words and of the tenor following, to wit:

Affidavits of service of notice.

THE WESTERN TELEGRAPH COMPANY vs. THE MAGNETIC TELEGRAPH COMPANY and Arumah S. Abell and Zenus Barnum.	In the circuit court of the United States for the Maryland district.

Ordered this 15th day of April, 1857, that the application for an injunction in this case stand for hearing on the 18th day of May next, provided a copy of this order be served on the Magnetic Telegraph Company and others on or before the first day of May next.

WILLIAM F. GILES.

True copy. THO. SPICER, *Clk.*

UNITED STATES OF AMERICA,
District of Maryland, to wit:

On this 20th day of April, 1857, before the undersigned, a commissioner of the circuit court of the United States for the fourth circuit in and for the Maryland district, personally appeared William Barrett, and made oath on the holy evangely of Almighty God that on the 18th day of April, 1857, he served a copy of the within order on Zenus Barnum, Arumah S. Abell, and John F. Mattingly, chief operator of the Magnetic Telegraph Company, of Baltimore.

JOHN HANAN,
U. S. Com'r for Md.

THE WESTERN TELEGRAPH COMPANY
vs.
THE MAGNETIC TELEGRAPH COMPANY and others.
} In the circuit court of the United States for the Maryland district.

Ordered this 15th day of April, A. D. 1857, that the application for an injunction in this case stand for hearing on the 18th day of May next, provided a copy of this order be served on the Magnetic Telegraph Company and others on or before the first day of May next.

WILLIAM F. GILES.

True copy.

THO. SPICER,
Clk. Circt. Ct.

UNITED STATES,
Eastern District of Pennsylvania.

On this twenty-ninth day of April, A. D. 1857, personally appeared before me a U. S. commissioner in and for said district, John Hanna, esquire, who being duly affirmed according to law, says, that on Tuesday, the 28th day of April, A. D. 1857, he personally read the annexed notice or application for an injunction to William M. Swain, of the city of Philadelphia, president of the Magnetic Telegraph Company, and at the same time delivered to him a true and exact copy of the said notice.

Witness my hand and seal, at Philadelphia, this 29th day of April, 1857.

CHA. F. HEAZLITT,
U. S. Com'r.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, sct.

I, George Plitt, clerk of the circuit court of the United States

of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify that I am well acquainted with the handwriting of Charles F. Heazlitt, esquire, whose name is subscribed to the annexed certificate, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, and still is, a commissioner of the said circuit court.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, at Philadelphia, this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of these United States the 81st. [SEAL]

GEORGE PLITT,
Clerk of C. C.

Afterwards, to wit, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, the defendants by their solicitor filed in the circuit court here an order in the words following, to wit:

Order.

THE WESTERN TELEGRAPH COMPANY
vs.
THE MAGNETIC TELEGRAPH CO. and others.

In the above case, the clerk will enter a general demurrer to the bill of complaint, and submit the cause for final hearing.

R. J. BRENT,
For Defendts. who have been served with process.

MAY, 1857.

General demurrer.

THE WESTERN TELEGRAPH COMPANY
v.
THE MAGNETIC TELEGRAPH COMPANY and Arumah S. Abell and Zenus Barnum.

And the said Magnetic Telegraph Company and Arumah S. Abell and Zenus Barnum, by Robert J. Brent, their solicitor, come and defend the wrong and injury, when, &c., and says, that the said bill of complaint, and the matters therein contained, in the manner and form as the same are above stated and set forth, are not sufficient in law for the said Western Telegraph Company to have or maintain its aforesaid action thereof against them, the said Magnetic Telegraph Company and Arumah S. Abell and Zenus

Barnum, and that they, the said Magnetic Telegraph Company and Zenus Barnum, are not bound by the law of the land to answer the same, and this they are ready to verify; wherefore, for want of a sufficient bill of complaint in this behalf, the said Magnetic Telegraph Company and Arumah S. Abell and Zenus Barnum pray judgment, and that the said Western Telegraph Company may be barred from having or maintaining its aforesaid action thereof against them, &c.

R. J. BRENT,
For Respondents.

Joinder in demurrer.

THE WESTERN TELEGRAPH COMPANY
vs.
THE MAGNETIC TELEGRAPH COMPANY and Arumah S. Abell and Zenus Barnum.

And the said Western Telegraph Company saith that the said bill of complaint and the matters therein contained in manner and form, as the same are above stated and set forth, are sufficient in law for it, the said Western Telegraph Company, to have and maintain its aforesaid action *action* thereof against them, the said Magnetic Telegraph Company and Arumah S. Abell and Zenus Barnum; and the said Western Telegraph Company is ready to verify and prove the same as the court here shall direct and award; wherefore, inasmuch as the said Magnetic Telegraph Company and Arumah S. Abell and Zenus Barnum have not answered the said bill of complaint, nor hitherto in any manner denied the same, the said Western Telegraph Company prays judgment, &c.

McLEAN & WILLIAMS,
Solcrs. for Complts.

On the same day the parties aforesaid, by their solicitors aforesaid, filed in the circuit court here the following submission, to wit:

Submission.

THE WESTERN TELEGRAPH COMPANY
vs.
THE MAGNETIC TELEGRAPH COMPANY and others.

This case is submitted upon the bill, exhibits, and demurrer.

McLEAN & WILLIAMS,
For Complts.

R. J. BRENT,
For Defdts. who have been served and for whom he appears.